No. 20,465

IN THE

United States Court of Appeals

For the Ninth Circuit

BARBARA L. HIATT,
Appellant,

vs.

SAN FRANCISCO NATIONAL BANK, DOE ONE, DOE TWO, and FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver of San Francisco National Bank,
Appellees.

On Appeal from the United States District Court for the Northern District of California, Southern Division

BRIEF FOR APPELLEE

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BRIEF FOR APPELLEE

PRELIMINARY STATEMENT

Plaintiff sued San Francisco National Bank to recover double the interest paid to the Bank on a loan, on the asserted ground that the amount of the interest violated the federal usury law which is contained in 12 U.S.C. §§ 85, 86.

Defendants moved to dismiss under Rule 12, F.R.C.P. on the ground that the interest in question was not rendered usurious by the federal usury law.[1]

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[1]Tr., 17-18.

The District Court granted the motion to dismiss,[2] and plaintiff has appealed.

We respectfully submit that the District Court's order is correct and should be affirmed.

THE COMPLAINT AND MOTION

The issue is presented by the complaint and by defendants' motion.

The complaint alleges that plaintiff gave to San Francisco National Bank her note for $27,500.00 for a loan, and that she paid thereon advance interest and monthly interest totalling $3,485.88, which was at the rate of 25.7% per annum; that such interest violated the federal usury law; and that by reason thereof defendants are indebted to plaintiff in double that amount, or $6,971.76.[3]

Defendant's motion to dismiss is based upon the ground that the complaint fails to state a claim upon which relief can be granted. The reason is that the interest received by the Bank from plaintiff did not violate the federal usury law.

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[2]Tr., 24-31.

[3]Tr., 9-10. The complaint contains a second count, by which plaintiff seeks to set off the $6,971.76 against $12,500 which plaintiff owes the bank. Tr., 10-11.

THE INTEREST PAID IN THIS CASE DOES NOT VIOLATE THE FEDERAL USURY LAW

I.

THE FEDERAL AND STATE LAWS ON RATE OF INTEREST

The federal law, which is contained in 12 U.S.C. ec. 85, provides

> "Any association (i.e. national banking association) may . . . charge . . . interest at the rate allowed by the laws of the State . . . where the bank is located . . . and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State . . . the bank may . . . charge a rate not exceeding 7 per centum . . ."[4]

The California law is contained in Sec. 22 of Article XX of the constitution, which was adopted in 1934; provides:

> "The rate of interest upon the loan . . . of any money . . . shall be 7 percent per annum but it shall be competent for the parties to any loan . . . to contract in writing for a rate of interest not exceeding 10 percent per annum.
>
> "No person . . . shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than 10 percent per annum upon any loan . . .

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[4]Title 12 U.S.C. Sec. 86 provides for forfeiture of interest xceeding the rate allowed by Sec. 85 and for recovery of twice ie amount thus paid.

> "However, none of the above restrictions shall apply to . . . *any bank created and operating under and pursuant to any laws of this State or of the United States of America* . . .
>
> "The Legislature may from time to time prescribe the maximum rate per annum of . . . the fees, bonus, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan . . .
>
> "The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith." (Emphasis supplied.)

As observed in appellant's brief, the effect of these provisions of the California constitution is that interest may not exceed 10 per cent, except that certain organizations including state and national banks are exempted from this constitutional limit, and as to such organizations the legislature may prescribe the maximum rate. And since the legislature has not acted on this subject, the law remains as stated in the constitution, and the organizations mentioned are subject to no restriction on interest rates. *Carter v. Seaboard Finance Co.* (1949), 33 Cal.2d 564, 203 Pac. 2d 758.

II.

APPELLANT'S CONTENTION

The question, then, is whether the federal usury statute imposes greater restrictions on national banks

in respect of interest rates than the California law does. Appellant's counsel argue that it does. They say that while state banks in California may charge any rate of interest, national banks are limited by the federal usury law to the 10 per cent which persons other than state banks may charge. In other words, they are attributing to Congress, in its legislation on this subject, the intention to place national banks in a disadvantageous position compared with state banks in this respect. Examination of the statute discloses that this is an erroneous interpretation.

III.

PURPOSE OF THE FEDERAL STATUTE, AND RULE OF CONSTRUCTION

In construing this statute, the Supreme Court in *Tiffany v. Bank of Missouri* (1874), 18 Wall. 409, 21 L.Ed. 862, 863, said:

> "In an action like the present, brought to recover that which is substantially a statutory penalty, the statute must receive a strict, that is, a literal construction. The defendant is not to be subjected to a penalty unless the words of the statute plainly impose it."

The Court in *Tiffany* also spoke of the purpose of the statute. In that respect, it said (21 L.Ed. 863):

> "It cannot be doubted, in view of the purpose of Congress in providing for the organization of national banking associations, that it was intended to give them a firm footing in the differ-

ent states where they might be located. It was expected they would come into competition with state banks, and it was intended to give them at least equal advantages in such competition. In order to accomplish this they were empowered to reserve interest at the same rates, whatever those rates might be, which were allowed to similar state institutions. This was considered indispensable to protect them against possible unfriendly state legislation. Obviously, if state statutes should allow to their banks of issue a rate of interest greater than the ordinary rate allowed to natural persons, national banking associations could not compete with them, unless allowed the same."

IV.

THE STATUTE SHOULD BE CONSTRUED AS PERMITTING THE INTEREST WHICH WAS PAID IN THIS CASE

The California law expressly provides that both state and national banks may charge any rate of interest. It does this by providing for persons generally a maximum rate of interest of 10 per cent and then providing that certain enumerated organizations, including banks, both state and national, are exempt from that restriction. Thus the California law "allows" a national bank to charge any rate. And the federal usury statute provides that a national bank may charge interest "at the rate allowed by the laws of the State . . ." The conclusion is that the federal usury law does not subject national banks to a restriction of interest in California.

Appellant attempts to escape this conclusion by making the following argument:

The first part of the federal usury statute says:

> "Any association may . . . charge . . . interest at the rate allowed by the laws of the State . . . except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter."

Appellant argues that the phrase "the rate allowed by the laws of the State" in the above statute means in this case the 10 per cent limit imposed generally by the California constitution; and appellant then contends that no different rate "is limited for banks organized under (California) laws," because under California law such banks are merely *exempted* from the 10 per cent limitation. The exemption referred to consists in the fact that the constitution, after providing that no one shall receive interest and other compensation for a loan totalling more than 10 per cent, provides

> "However, none of the above restrictions shall apply to . . . any bank created and operating under and pursuant to any laws of this State or of the United States of America . . ." (Emphasis supplied.)

We do not agree that "the rate allowed by the laws of the State" means 10 per cent in this case. The federal statute says, "any (national bank) may . . . charge . . . interest at the rate allowed by the laws

of the State . . ." The California constitution allows a national bank to charge *any* rate, not *10 per cent.* It does so, by expressly saying that none of the restrictions on interest shall apply to any bank, either state or national. This is the same as if it provided that there should be a limit of 10 per cent on all interest charged by persons other than banks, but that as to banks, both state and national, there should be no limit and that on loans by banks the parties could agree to the payment of any rate of interest.

The attempted invocation of the "except" clause has an unreal basis. That clause is:

> "except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter."

The evident purpose of that clause is to avoid discrimination, in the federal usury law, against a national bank, which would occur if by state law national banks were restricted to a lower rate of interest than state banks. In such case the exception would come into operation, and the national banks in that state could charge the same rate as the state banks without violating the federal usury law. But that is not the situation in California. In California, the law expressly puts both national and state banks on the same footing; that is, it allows them both to charge any rate of interest.

Even if the exception clause were applicable, it would not alter the conclusion in this case. This is so

because appellant's argument in this respect is verbal only; that is, a law exempting banks from restrictions imposed upon others would be "limiting a different rate for banks," since in view of the purpose of the statute that phrase clearly means *allowing* a different rate.

A landmark decision on construction of the federal usury statute in relation to state law is *Daggs v. Phoenix National Bank* (1900), 177 U.S. 549, 44 L. Ed. 882. In that case, the Court considered the federal statute in the light of the law of Arizona which provided that "When there is no express agreement fixing a different rate of interest, interest shall be allowed at the rate of 7 per cent per annum . . ."; but which also provided: "Parties may agree in writing for the payment of any rate of interest whatever on money due or to become due on any contract . . ." In the *Daggs* case, a borrower from a national bank contended that interest under a note was usurious in violation of the federal statute. The Court held otherwise, saying (44 L.Ed., p. 884):

> "The contention of appellant is that the rate of interest is not *fixed* by the laws of the territory. It permits the parties to do so, but does not do so itself. In other words, it is urged that the rate is fixed by permission of the laws, and not by the laws, and upon this distinction a power which every person and every bank in the territory has, it is contended, the national banks do not have. (Emphasis the Court's.)
>
> "We cannot accept this as a correct interpretation of either the spirit or the words of the na-

> tional banking act. By that act, certainly no discrimination was intended against national banks, and that the interpretation contended for would seriously embarrass their business is manifest."

After quoting from *Tiffany* to the effect that Congress did not intend to expose national banks to unfair treatment by the states, the Court in *Daggs* quoted the federal statute, and then said (p. 885):

> "The meaning of these provisions is unmistakable. A national bank may charge interest at the rate *allowed* by the laws of the state or territory where it is located; and equality is carefully secured with local banks.
>
> "The clear meaning and purpose of these provisions remove the ambiguity of those which follow, if there is any ambiguity. 'When no rate is *fixed* by the laws of the state or territory or district, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum.' *'Fixed by the laws'* must be construed to mean *'allowed by the laws,'* not a rate expressed in the laws. In instances it might be that, but not necessarily. The intention of national law is to adopt the state law, and permit to national banks what the state law allows to its citizens and to the banks organized by it. *Tiffany v. National Bank,* 18 Wall. 409, 21 L. Ed. 862." (Emphasis the Court's.)

Appellant attempts to avoid the effect of the *Daggs* decision only by saying that the case involved a statute which provided that the "parties may agree . . for the payment of any rate of interest," whereas in the present case there is no such statute but rather a

exemption from all restrictions of interest. The distinction is nominal; in substance the situations are identical.

CONCLUSION

Appellant's interpretation of the federal statute would limit national banks to 10 per cent interest in California while state banks would be free to charge any rate in excess of that amount. This would violate the intention of Congress, which is to protect national banks against such discrimination.

The statute must be strictly construed so that a transaction may be declared usurious only when it comes clearly within the terms of the statute. The present transaction does not meet that test; on the contrary, the act expressly states that a national bank may charge interest at the rate allowed by the state, and by virtue of the California law all banks, national as well as state, may charge interest at any rate agreed upon.

Appellant's contention is a nominal one only, being based upon an artificial extraction of some of the words of the statute, for the purpose of drawing a conclusion which not only nullifies the congressional intention to protect national banks against just such discrimination but also conflicts with the express wording of the statute itself and with the decision of the Supreme Court in *Daggs v. Phoenix National Bank.*

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BRIEF OF CALIFORNIA BANKERS ASSOCIATION, AMICUS CURIAE, IN SUPPORT OF APPELLEES

STATEMENT OF INTEREST

Until now, no one has questioned the right of national banks in California to charge interest at the same rates chargeable under law by California state banks. Thus, the practice in California has been, and continues to be, for state and national banks to compete with one another on interest rates to prospective borrowers. What appellant seeks in this case is to destroy that competition by constricting the maximum interest rates chargeable by national banks below those allowed by law to state banks.

Not only is appellant's attack here an attempt to undermine bank competition in California, it also casts an unwarranted aspersion on the validity of past interest charged by national banks at rates which appear clearly lawful under 12 U.S.C., section 85. For these reasons, the California Bankers Association, a non-profit corporation comprised of both state and national banks, is vitally concerned by the outcome of this case.

Accordingly, the Association, with the consent of both parties, hereby submits its brief, amicus curiae, on behalf of the banks of California.

STATEMENT OF THE CASE

The facts in this case are simply stated. Appellant filed an action in the California Superior Court to recover interest paid by appellant under a loan from appellee, a national bank in California. The action was subsequently removed to the federal district court where the complaint was dismissed on the ground that the alleged 25.7% interest rate paid by appellee was not usurious under 12 U.S.C., section 85.[1]

Section 85 provides that national banks may charge "interest at the rate *allowed*[2] by the laws of the State . . . where the bank is located." If a "different rate is *limited*" for state banks, the rate "so limited" shall be allowed to national banks. "When no rate is *fixed*"

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[1]All relevant statutes cited in this brief are quoted in full in Appendix A at the end of the brief.

[2]All emphasis here and elsewhere in this brief has been added.

then a national bank cannot charge a rate of interest in excess of 7%.

The sole issue presented by this appeal is whether under section 85 national banks in California are "allowed by the laws of the State" to charge interest at the rate appellant agreed to pay. Stated differently, may national banks in California charge interest at the same rates chargeable by California state banks?

DISCUSSION

In her brief before this Court, appellant concedes what has been perfectly obvious to everyone else: that the interest rate appellant agreed to pay under appellee's loan was allowed by California law to national as well as state banks. Since section 85, 12 U.S.C., expressly authorizes national banks to charge interest at rates "allowed by the laws of the State" where they are located, appellant's concession by itself requires dismissal of her complaint.

Totally inconsistent with appellant's concession is her contention that California law must affirmatively state that interest rates of banks are unrestricted before it can be said that national banks in California may charge interest at rates agreed upon with their customers. Not only is this interpretation of section 85 contrary to the plain language of that statute, it also thwarts the manifest purpose of section 85 to place national banks on a competitive par with rival state banks with respect to interest charges. What is more, even if appellant's distorted interpretation of

section 85 were assumed, the fact is that California law does affirmatively state that banks may charge unrestricted interest rates.

I.

SINCE APPELLANT CONCEDES THAT THE RATE OF INTEREST CHARGED BY APPELLEE WAS "ALLOWED BY THE LAWS OF THE STATE" OF CALIFORNIA TO STATE BANKS, HER COMPLAINT MUST BE DISMISSED.

Appellant concedes that had appellee been a California state bank the interest charged would not be usurious under California law. (Br. p. 8.) This concession by appellant is not at all surprising since section 22, article XX, of the California Constitution, which sets maximum interest rates in California at 7% generally and 10% under written contract, specifically exempts from the "above restrictions" certain lenders including state and national banks. *"The result"* of this exemption, appellant frankly admits, *"is therefore that . . . state banks may charge any rate of interest whatsoever."* (Br. p. 8.) Thus, by appellant's own admission, California state banks and their customers may agree for the payment of any rate of interest, solely because state law allows them to do so.[3]

Appellant also concedes that if state law allows state banks or other parties to agree for the payment of any rate of interest, then under section 85, 12 U.S.C., national banks may likewise charge any rate

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[3]Appellant correctly denominates section 22, article XX of the California Constitution as "State law" (Br. p. 8), thereby abandoning a contrary suggestion made in the court below.

of interest. (Br. p. 5.) In fact, that is precisely what the Supreme Court held in *Daggs v. Phoenix Nat'l Bank,* 177 U.S. 549, 554-55 (1900).

It follows, therefore, from appellant's own admissions, that national banks in California may charge interest at rates that borrowers, such as appellant, agree to pay. For section 85, 12 U.S.C., expressly authorizes national banks to charge interest at rates allowed under local law to state banks, and in California state banks are admittedly allowed to charge interest at agreed upon rates. In fact, the California law specifically allows *national* banks to charge interest at agreed upon rates, and on that basis, too, national banks in California are authorized under section 85 to set their own maximum interest rates.

Seeking to avoid this inescapable conclusion, appellant has raised a number of contentions which, in the words of the trial court, can only be regarded as "far fetched." (Mem. Op. p. 4.) First, appellant suggests that there are different standards to be applied under section 85, one standard to ascertain what interest rates are "limited" for state banks under state law and another standard to ascertain what rates are "allowed" under local law. Suffice it to say, the terms "limited for" and "fixed by" have both been construed to mean "allowed" or "permitted" by state law, in accordance with the first clause of section 85.[4] *Daggs*

[4]Actually, if the rate charged by a national bank is "allowed by the laws of the State" there is no need to inquire whether a different rate is "limited for" state banks. *Tiffany v. National Bank,* 85 U.S. (18 Wall.) 409, 411 (1874). The rate charged by appellee was specifically allowed to national banks under California law.

v. Phoenix Nat'l Bank, 177 U.S. 549, 555 (1900); *Tiffany v. National Bank,* 85 U.S. (18 Wall.) 409, 412 (1874); *First Nat'l Bank v. Duncan,* 9 Fed. Cas. 91, 93 (No. 4,804) (C.C.W.D. Pa. 1878). The sole inquiry under section 85 is what interest rates do state laws "allow" or "permit" to be charged. *Panos v. Smith,* 116 F.2d 445, 446 (6th Cir. 1940); *Rockland-Atlas Nat'l Bank v. Murphy,* 329 Mass. 755, 757, 758-60, 110 N.E.2d 638, 639, 641 (1953). As shown through appellant's own admissions, California law allows not only state banks but national banks as well to set their own maximum interest rates.

Next, without recognizing its significance, appellant refers to the provision in section 22, article XX of the California Constitution, which authorizes the legislature to prescribe maximum interest rates for lenders exempted from the rates prescribed in section 22. Signally, in the 31 years since section 22 was adopted, the legislature has prescribed maximum interest rates for some classes of exempted lenders, but has left the exemption for banks fully intact. *Wolf v. Pacific Southwest Discount Corp.,* 10 C.2d 183, 184, 74 P.2d 263, 264 (1937). Hence, if anything, the legislature's unexercised authority to remove the banks' exemption from maximum interest rates, establishes the legislature's purpose to allow banks and their customers to agree upon interest rates to be charged. The legislature could very well have concluded that the intense competition existing among banks in California more than adequately protects borrowers from overreaching by banks.

II.

APPELLANT'S POSITION FLOUTS THE MANIFEST PURPOSE OF THE NATIONAL BANKING ACT AND SECTION 85, 12 U.S.C.

Unquestionably, one major purpose of the National Banking Act, 12 U.S.C. §§ 21 *et seq.*, was to place national banks on an equal footing with competing state banks by securing to national banks the same privileges afforded state banks under state law.[5] As stated by the Supreme Court in *Tiffany v. National Bank,* 85 U.S. (18 Wall.) 409, 412 (1874):

> "It cannot be doubted, in view of the purpose of Congress in providing for the organization of National banking associations, that it was intended to give them a firm footing in the different States where they might be located. It was expected they would come into competition with State banks, and *it was intended to give them at least equal advantages in such competition. In order to accomplish this they were empowered to reserve interest at the same rates, whatever those rates might be, which were allowed to similar State institutions.*"

Similarly, in *Daggs v. Phoenix Nat'l Bank, supra,* the Court held:

> "The meaning of these provisions [in 12 U.S.C. § 85] is unmistakable. A national bank may charge interest at the rate *allowed* by the law of

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[5]In addition to section 85, numerous other sections of the National Banking Act were designed to provide the same privileges to national banks as are allowed to competing state banks under state law. See, *e.g.,* 12 U.S.C. § 36(c) (branch banking); § 51 (requisite capitalization); §§ 92a(a),(f) (trust powers); § 214c (conversion into state bank); and § 215(d) (appraisal rights upon consolidation).

> the State or Territory where it is located; *and equality is carefully secured with local banks.*" 177 U.S. at 555.

Because the manifest purpose of the National Banking Act was to place national banks on a par with rival state banks, courts have consistently construed section 85 broadly to permit national banks to charge interest at the same rates chargeable by state banks. For example, in *First Nat'l Bank v. Duncan,* 9 Fed. Cas. 91 (No. 4,804) (C.C.W.D. Pa. 1878), the court rejected the argument that national banks could not charge the same interest rates allowed to state banks under their state charters. The court's holding, that charters issued to state banks constitute "State law" under section 85, was based on the following rationale:

> "States might establish banks alongside of every national bank, and give them powers against which the national banking associations could not compete. *A construction of the act of congress that opens the door to such results cannot be accepted as the true one.*" 9 Fed. Cas. at 93.

Thus, the plain purpose of section 85 and the restrictive interpretation of that section advanced by appellant are wholly at odds. If there were any question whether section 85 permits appellee to charge interest at the same rates chargeable by California state banks, the purpose of the statute alone requires that the question be resolved in appellee's favor.

The dangers inherent in appellant's position were recently expressed by the court in *Commercial Sec. Bank v. Saxon,* 236 F. Supp. 457, 460 (D.D.C. 1964):

"It seems clear to the Court that in order for the 'dual banking system' of the United States, consisting of state chartered banks and national banks chartered under the National Bank Act . . . to continue to function as such, there must be a competitive equality in at least the most important areas of competition between the two systems. If such were not the case, one or the other of the two types of banks, the one with the competitive weight against it, would substantially be driven out of existence, either through failures or conversions to the other class of banking."

III.

EVEN IF APPELLANT'S ERRONEOUS INTERPRETATION OF SECTION 85 WERE ASSUMED, THE FACT IS THAT CALIFORNIA STATE LAW DOES AFFIRMATIVELY ALLOW STATE AND NATIONAL BANKS TO SET THEIR OWN MAXIMUM INTEREST RATES.

The whole thrust of appellant's argument is that state law must affirmatively state that bank interest rates are unrestricted before it can be said under section 85, 12 U.S.C., that state law "allows" or "limits" banks to charge interest at rates agreed upon with their customers. An exemption from maximum rates, which achieves precisely the same result, does not suffice according to appellant's view. As already shown, appellant's position is contradicted by her own admissions, is completely without merit, and is totally at odds with the manifest purpose of the National Banking Act.

Nevertheless, even assuming appellant's erroneous interpretation of section 85, the fact is that California state law *does* affirmatively state that bank interest rates are unrestricted. What appellant fails to comprehend is that the term "State law" in section 85 is in no way limited to the statutory or constitutional enactments of the state, but includes as well decisions of the state's highest tribunal construing those enactments.

That the term "State law" in section 85 embraces decisions of the California Supreme Court construing section 22, article XX of the California Constitution, is clearly established by the cases arising under section 85.[6] These cases invariably rely upon state decisional law in determining whether the interest rates charged by national banks were allowed by the laws of the state. See, *e.g., Panos v. Smith,* 116 F.2d 445, 446 (6th Cir. 1940); *Shumacker v. Lawrence,* 108 F.2d 576, 577 (6th Cir. 1940); *Evans v. National Bank,* 251 U.S. 108, 112 (1919); *Citizens' Nat. Bank v. Donnell,* 195 U.S. 369, 374 (1904); *Anderson v. Hershey,* 127 F.2d 884, 886 (6th Cir. 1942); *Daniel v. First Nat'l Bank,* 227 F.2d 353, 356-57 (5th Cir. 1955).

Turning to decisions of the California Supreme Court construing the exemption afforded lenders under section 22, article XX of the California Constitution,

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[6]There is certainly ample authority for construing "State law" under federal statute to include decisions of the state's highest court. The best known example is, of course, *Erie R.R. Co. v. Tompkins,* 304 U.S. 64, 78 (1938).

we need look no further than the very case relied upon by appellant (Br. p. 4), *Carter v. Seaboard Fin. Co.*, 33 C.2d 564, 203 P.2d 758 (1949). In that case the court held that banks and other lenders which are exempt from the maximum interest rates prescribed under section 22 are *"subject to no restriction on interest rates or charges."* 33 C.2d at 582, 203 P.2d at 770.

Accordingly, California law does affirmatively state that bank interest rates are unrestricted, and therefore, even under appellant's erroneous construction of 12 U.S.C. § 85, the interest appellant agreed to pay was not usurious.

CONCLUSION

The amicus curiae joins the appellees and supports their conclusion, that the judgment of the lower court dismissing appellant's complaint be affirmed.

Dated, San Francisco, California,
February 4, 1966.

Respectfully submitted,
ROBERT D. RAVEN,
MELVIN R. GOLDMAN,
MORRISON, FOERSTER, HOLLOWAY,
CLINTON & CLARK,
Attorneys for Amicus Curiae.

Certificate of Counsel

I certify that, in connection with the preparation of this brief, amicus curiae, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Melvin R. Goldman,
Attorney for Amicus Curiae.

(Appendix A Follows)

Appendix "A"

Appendix A

12 U.S.C. § 85:

"Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insu-

lar possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest."

12 U.S.C. § 86:

"Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: *Provided,* That such action is commenced within two years from the time the usurious transaction occurred."

Cal. Const. art. XX, § 22:

"Rate of Interest

* * *

The rate of interest upon the loan or forbearance of any money, goods or things in action, or on accounts after demand or judgment rendered in any court of the State, shall be 7 per cent per

annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding 10 per cent per annum.

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than 10 per cent per annum upon any loan or forbearance of any money, goods or things in action.

However, none of the above restrictions shall apply to any building and loan association as defined in and which is operated under that certain act known as the 'Building and Loan Association Act' approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled 'An act defining industrial loan companies, providing for their incorporation, powers and supervision,' approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled 'An act defining credit unions, providing for their incorporation, powers, management and supervision,' approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any bank as defined in and operating under that certain act known as the 'Bank Act,' approved March 1, 1909, as amended, or any bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 4 of Division 6 of the Agricultural Code in loan-

ing or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry and bee products on a co-operative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled 'Agricultural Credits Act of 1923,' as amended in loaning or advancing credit so secured, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonus, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or forbearance of any money, goods or things in action.

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith."